

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

**DAVID MALIK, ESQ,
ESPERANZA PACHECO PADILLA
8437 MAYFIELD RD.
CHESTERLAND, OHIO 44026**

Plaintiffs,

vs.

**IMMIGRATION AND CUSTOMS
ENFORCEMENT
500 12TH ST., SW
WASHINGTON, DC 20024**

Defendant

Case No.:

COMPLAINT

(JURY DEMAND)

COMPLAINT

INTRODUCTION

1. Plaintiffs seek information via FOIA regarding the government's basis for its repeated collection of a \$155 filing fee and its subsequent systemic denials of I-246, Stay of Deportation filings. This conduct has led to a public, humanitarian, and bioethical crisis in Painesville, Ohio and throughout the United States, yet the government has ignored Plaintiffs' FOIA requests.
2. Plaintiffs Esperanza Pacheco Padilla and David B. Malik bring this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 to compel Defendant United States Immigration and Customs Enforcement ("ICE") to comply with a FOIA request.
3. On November 14th, 2018, Mr. Malik, acting as an attorney on behalf of Esperanza Pacheco Padilla, sought records from ICE including:

- 1 1) Any policies related to its criteria for assessing I-246 petitions for Stays of Removal,
- 2 2) Any policies relating to priority enforcement categories, or a lack of enforcement categories, for
- 3 removable individuals,
- 4 3) Any policies related to racial or ethnic profiling,
- 5 4) Any policies related to the level of suspicion necessary for ICE to detain an
- 6 individual,
- 7 5) The nationalities and ICE's biographical racial identification of all individuals
- 8 denied Stays of Removal from January 2017-October 2018 by the agency's Detroit ERO Field
- 9 Office.
- 10 6) Policies and procedures which describe the determination of the filing fee of \$155 for an I-246
- 11 Stay of Removal petition and any policies or procedures which relate to the manner in which the
- 12 Detroit ERO Field Office utilizes this fee in determining the outcome of an I-246 petition.

13 4. Defendant ICE, has violated the FOIA by failing to respond to Ms. Pacheco Padilla and
14 Mr. Malik's request within the statutorily prescribed time limit of twenty business days
15 and by failing to disclose the documents requested. Thus, Plaintiffs now seek declaratory
16 relief from the Court to order Defendant to respond to the request and disclose all
17 records which have been improperly withheld.

18 **JURISDICTION AND VENUE**

- 19 5. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B). This
20 Court also has jurisdiction over this action as a federal question under 28 U.S.C. § 1331.
- 21 6. This Court has the authority to grant declaratory relief pursuant to the Declaratory
22 Judgment Act, 28 U.S.C. § 2201(a). Venue is proper under 5 U.S.C. § 552(a)(4)(B), as
23 the requested agency records are located in this district, and 28 U.S.C. § 1391(e).

24 **PARTIES**

- 25 7. Plaintiff David Malik is the attorney representing Plaintiff Esperanza Pacheco
26 Padilla. David Malik sent the FOIA request in his name while acting on behalf of
27 Plaintiff Esperanza Pacheco Padilla. He is seeking records on her behalf in
28 anticipation of further litigation regarding the circumstances surrounding her
deportation. Ms. Pacheco-Padilla was a 25-year resident of the United States living
in Painesville, Ohio prior to her removal by ICE. She is a native and national of

1 Mexico and currently resides near León, Mexico. Her Lawful Permanent Resident
2 husband and four United States Citizen children continue to reside in the Cleveland,
3 Ohio area.

- 4
- 5 8. Defendant U.S. Immigration and Customs Enforcement (“ICE”) is the sub-agency
6 of the Department of Homeland Security responsible for carrying out removal
7 orders and for deciding I-246 petitions for Stays of Removal.

8 **STATUTORY FRAMEWORK**

- 9
- 10 9. The FOIA provides every person with a right to request and receive federal agency
11 records pursuant to 5 U.S.C. § 552(a)(3)(A) in an effort to promote administrative
12 transparency. In furtherance of this policy, FOIA imposes strict deadlines on agencies to
13 provide requesting individuals documents responding to FOIA requests under 5 U.S.C. §
14 552(a)(6)(A).
- 15
- 16 10. An agency must comply with a FOIA request by issuing a determination within twenty
17 business days after receipt of the request. 5 U.S.C. § 552(a)(6)(A)(i). However, an
18 agency may be entitled to a ten-day extension of time to respond to a request if it
19 provides written notice to the individual requesting documents and provides that the
20 delay in responding to the request is the result of unusual circumstances which warrant
21 additional time, pursuant to 5 U.S.C. § 552(a)(6)(B).
- 22
- 23 11. Under 5 U.S.C. § 552(a)(6)(B)(ii), an agency must immediately notify the requester of
24 its determination to comply with or refuse a request and the reasons for it.
- 25
- 26 12. Under 5 U.S.C. § 552(a)(6)(C)(i), failure to comply with a FOIA request within the
27 statutorily proscribed time frame constitutes a constructive denial and thus fulfills
28 requester’s requirement to exhaust administrative remedies.

1 13. Pursuant to 5 U.S.C. § 552(a)(4)(B), an individual seeking information via FOIA who
2 has exhausted administrative remedies may petition the court for injunctive and
3 declaratory relief from the agency's withholding of records.
4

5 **FACTUAL BACKGROUND**

6 *Background of Ms. Pacheco Padilla's Circumstances*

7 14. Mr. Malik is an attorney currently licensed in the State of Ohio. He is certified to
8 practice in the Northern District of Ohio and he is representing Ms. Pacheco Padilla.

9 15. Esperanza Pacheco Padilla is a native and citizen of Mexico. She entered the United
10 States without inspection in March of 1995. She was placed into immigration
11 proceedings in 2002. She was ordered removed on May 2, 2003. After retaining
12 counsel, Ms. Pacheco Padilla applied for and was granted a Stay of Deportation in
13 2011 by the Detroit ERO office.
14

15 16. At the time that she was granted her stay of removal, ICE was made fully aware of
16 Ms. Pacheco Padilla's forthcoming eligibility for relief and path to legal status under
17 INA §245(i), her strong family ties to the United States, her good moral character,
18 and her positive role in her Painesville, Ohio community.
19

20 17. Ms. Pacheco Padilla diligently renewed her stay annually through the proper filing of
21 I-246 petitions and applicable filing fees from 2012-2017. She also personally
22 checked in with ICE at each and every Order of Supervision (OSUP) ICE
23 appointment, accompanied by her immigration attorney.
24

25 18. However, on November 14, 2017, Ms. Pacheco Padilla's situation changed
26 dramatically. In an effort to comply with all ICE directives, Ms. Pacheco Padilla
27 attended her scheduled OSUP check-in appointment with ICE at their offices in
28

1 Brooklyn Heights, Ohio. At this time, she was separated from her husband, who was
2 present, and her immigration attorney, who was also present, and she was taken into
3 custody and transferred to the Geauga County Jail.

4
5 19. Three days later, on November 20, 2017, prior to Ms. Pacheco Padilla's actual
6 removal from the United States, her immigration attorney filed a timely emergency
7 request for a Stay of Removal. A mandatory government required processing fee of
8 \$155 was paid when the Stay of Removal was filed.

9
10 20. Without a response to this request, Ms. Pacheco Padilla was removed from the
11 United States to Mexico. The removal occurred in November of 2017.

12 21. Ms. Pacheco Padilla currently resides near León, Mexico. Her four U.S. citizen
13 children currently remain in the Painesville, Ohio area.

14 22. As a result of her forced removal from the United States Ms. Pacheco Padilla has
15 experienced severe emotional distress and her children have suffered severe mental
16 anguish as a result of the deportation. Additionally, loss of their parent has resulted
17 in a multitude of barriers in the children's attempt to obtain appropriate and
18 necessary mental health care following their mother's deportation.

19
20 ***ICE's Failure to Respond to November 14, 2018 FOIA Request***

21 23. Plaintiffs sent a FOIA request electronically to ICE on November 14, 2018. This
22 request sought the records identified above which relate to ICE's policies and criteria
23 for assessing I-246 petitions for Stays of Removal.

24 24. The request also sought information about policies relating to priority enforcement
25 categories, or a lack of enforcement categories for removable individuals, policies
26 related to racial or ethnic profiling, policies related to the level of suspicion
27
28

1 necessary for ICE to detain an individual, information about the nationalities of those
2 deported and ICE's biographical racial identification data of all individuals denied
3 Stays of Removal from January 2017-October 2018 by the agency's Detroit ERO
4 Field Office. Information was also requested about the policies and procedures
5 which describe the determining criteria that set the filing fee for an I-246 Stay of
6 Removal petition at \$155 as well as any policies or procedures which relate to the
7 manner in which the Detroit ERO Field Office utilizes this fee in the final
8 determination of the outcome of an I-246 petitions.
9

10
11 25. ICE is an "agency" as defined by 5 U.S.C. § 552(f)(1), as it is an executive
12 department. Therefore, ICE must comply with the prescribed statutory requirements
13 of FOIA, including response times.

14 26. The statutory deadline for ICE to response to the Request passed on December 14th,
15 2018.

16
17 27. ICE never acknowledged receipt of the FOIA request, though confirmation of
18 electronic submission was provided to the requestor at the time of submission.

19 28. At the time of filing this Complaint, ICE has not produced a response or any of the
20 requested documents, nor has ICE provided information regarding the specific
21 circumstances preventing the disclosure of the documents Mr. Malik requested.

22
23 29. This failure to respond constitutes a constructive denial of the request, and as such,
24 Plaintiffs have thus exhausted their administrative remedies to access the requested
25 records.

26 30. Plaintiffs have a compelling and immediate need to access this information for
27 urgent humanitarian reasons in the course of Ms. Pacheco Padilla case, including, but
28

1 not limited to, considerations of the mental health of Ms. Pacheco Padilla's four U.S.
2 Citizen children.

3 31. Many similarly situated individuals in the Cleveland area are being deported without
4 notice and without a rationale for the denial of their Stays of Removal, though they
5 have properly filed their I-246 petitions and submitted a processing fee of \$155 to
6 ICE. This has led to a public health, humanitarian, and bioethics crisis in the
7 Painesville Latino community. Fears of parental deportation and deportations
8 themselves have caused significant detrimental impacts on the emotional and
9 behavioral functioning of children fearing the loss of one or both parents and for
10 children left behind in the wake of parental deportations.
11

12 32. In light of these public, humanitarian, and bioethical concerns for her own family, it
13 is critical for Mr. Malik and Ms. Pacheco Padilla to understand ICE's true removal
14 motivations, removal priorities, policies for processing and deciding properly filed I-
15 246 motions, and the agency's policies regarding racial profiling and discrimination.
16

17 **CAUSES OF ACTION**

18 **COUNT I**

19 Failure to Respond to Request Within Statutory Timeframe in Violation of 5 U.S.C. §
20 552(a)(6)(A)(i)

21 33. All of the foregoing allegations are repeated and realleged as though fully set forth
22 herein.
23

24 34. Defendant ICE failed to respond to Plaintiffs' November 14, 2018 FOIA request
25 within the statutorily mandated timeframe, which has violated Plaintiffs' rights
26 under FOIA and continues to impede Mr. Malik's representation of Ms. Pacheco
27 Padilla.
28

COUNT II

Failure to Produce Search for or Produce Responsive Records in Violation of 5 U.S.C. § 552(a)(3) and 5 U.S.C. § 552(a)(3)(A)

35. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

36. ICE failed to make reasonable efforts to search for records to respond to Mr. Malik and Ms. Pacheco Padilla's request, thus violating their rights under FOIA.

37. ICE failed to disclose records or produce any records pursuant to Mr. Malik and Ms. Pacheco Padilla's request, thus violating their rights to those records under FOIA.

38. ICE failed to provide a legal basis for withholding records, thus violating its statutory obligations under FOIA.

39. Ms. Pacheco Padilla is entitled to her reasonable attorney's fees and costs under 5 U.S.C. § 552(a)(4)(E).

PRAAYER FOR RELIEF

Plaintiffs asks that this Court grant the following relief:

40. Expedite its consideration of this action pursuant to 28 U.S.C. § 1657;

41. Find that Defendant's failure to respond or disclose records within the statutorily proscribed timeframe was unlawful;

42. Find that Defendant's failure to provide a legal basis for withholding the requested records was unlawful;

43. Order Defendant to search for and promptly disclose all records responsive Plaintiffs' Request;

44. Award Ms. Pacheco Padilla's attorneys' fees and costs;

45. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ David B. Malik

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